

Legislation Text

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Amending Title 10 of The Philadelphia Code, entitled "Regulation of Individual Conduct and Activity," by repealing certain provisions relating to temporary removal of firearms and adding a new Chapter 10-2300, entitled "Philadelphia Gun Violence Protection," establishing procedures relating to the relinquishment or seizure of firearms from individuals who present an imminent threat of harm to the individual's own self or others, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Sections 10-836 (Temporary Removal of Firearms of Persons Posing a Risk of Imminent Personal Injury to Self or Others) and 10-836a (Temporary Removal of Firearms of Persons Posing a Risk of Imminent Personal Injury to Self or Others) of The Philadelphia Code are hereby repealed.

SECTION 2. Title 10 of The Philadelphia Code is hereby amended to read as follows:

TITLE 10. REGULATION OF INDIVIDUAL CONDUCT AND ACTIVITY.

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CHAPTER 10-2300. PHILADELPHIA GUN VIOLENCE PROTECTION.

§ 10-2301. *Definitions.*

In this Chapter the following definitions apply:

(1) "Abuse" means the occurrence of one or more of the acts set forth in the definition of "abuse" in 23 Pa.C.S. § 6102(a), provided that the limitations set forth in subsection 6102(a) with respect to the relationship between the individual conducting the abuse and the abused individual shall not apply.

(2) "Court" means the Philadelphia Court of Common Pleas.

(3) "Court Administrator" means the Office of Court Administrator for the First Judicial District of Pennsylvania.

(4) "Family or household member" means, with respect to a respondent, any: (a) Person related by blood, marriage, or adoption to the respondent; (b) dating partners of the respondent; (c) person who has a child in common with the respondent; (d) person who resides or has resided with the respondent within the past year; (e) domestic partner of the respondent; or (f) person who is acting or has acted as the respondent's legal guardian.

(5) "Firearm" means any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or the frame or receiver of any such weapon.

(6) “*Gun Violence Protection Order*” means an *ex parte* emergency order or a final order granted under this Chapter, or any renewal thereof.

(7) “*Law enforcement officer*” means any Municipal Police Officer as defined in 42 Pa.C.S. § 8951 or School Police Officer within the meaning of the Act of Mar. 10, 1949, P.L. 30, No. 14, § 778, as amended, 24 P.S. § 7-778 (the “*Public School Code of 1949*”).

(8) “*Petitioner*” means the person who files the paperwork to obtain a *Gun Violence Protection Order*.

(9) “*Respondent*” means the person who is identified as the individual at risk of harming such person’s own self or another with a firearm.

(10) “*School Official*” means any teacher, professor, adjunct professor, counselor, or principal whose knowledge of or relationship with respondent stems, at least in part, from such professional school position.

§ 10-2302. *Petition for a Gun Violence Protection Order.*

(1) A petition for a *Gun Violence Protection Order* may be filed by a family or household member of a respondent, a school official, any law enforcement officer, or any attorney for the Commonwealth.

(2) A petition shall:

(a) *Allege that the respondent presents an imminent threat of harm to others or to respondent’s own self by having a firearm in respondent’s possession custody or control;*

(b) *Be accompanied by an affidavit stating the specific statements, actions, or facts that give rise to a reasonable belief that the respondent presents an imminent threat of harm to respondent’s own self or to others;*

(c) *Identify the number, types, and locations of any firearms the petitioner believes to be in the respondent’s possession, custody, or control;*

(d) *Identify whether there is a known existing Protection Order governing the respondent, under 23 Pa.C.S. §§ 6101 to 6122, 42 Pa.C.S. §§ 62A01 to 62A20, or under any other applicable statute;*

(e) *Identify whether there is a pending lawsuit, complaint, petition, or other action between the parties to the petition in any federal, state or local court; and*

(f) *State the petitioner’s address or state that disclosure of the petitioner’s address would risk harm to the petitioner or any member of the petitioner’s family or household. If the petitioner has not disclosed an address under this subsection, the petitioner must designate an alternative address at which the respondent may serve notice of any hearing or other actions. If the petitioner is a law enforcement officer, a school official, an attorney for the Commonwealth, the address of record shall be that of the agency.*

(3) *If the petitioner is a law enforcement officer, the law enforcement officer shall make a good faith effort to provide notice to a family or household member of the respondent and to any known third party*

who may be at risk of violence.

(4) No fees for filing or service of process may be charged by the Court or any public agency to petitioners seeking relief under this Chapter, unless otherwise provided by applicable law, or Court rule or procedure.

§ 10-2303. Persons Subject to a Gun Violence Protection Order.

A respondent may be subject to a Gun Violence Protection Order when a Court determines that:

(1) such respondent presents an imminent threat of harm to respondent's own self or to others;

(2) such respondent possesses, has custody of, has control over, or has access to one or more firearms; and

(3) the respondent either (a) lives in, works in, or otherwise routinely visits the City of Philadelphia, or (b) such firearm or firearms are or were located within the City of Philadelphia, or both.

§ 10-2304. Imminent Threat of Harm Determination.

(1) Reasonable Belief. A petitioner may establish a reasonable belief that a respondent presents an imminent threat of harm to respondent's own self or to others by alleging in a petition, and ultimately establishing by a preponderance of the evidence at a hearing, that one or more of the following circumstances occurred within 120 days prior to the date of filing of a petition pursuant to Section 10-2302, or such other time period as the Court determines is appropriate under the circumstances:

(a) The respondent has inflicted, attempted to inflict, or threatened to inflict abuse on another.

(b) The respondent has inflicted, attempted to inflict, or threatened to inflict serious bodily harm on the person's own self.

(c) The respondent has attempted to or threatened to commit suicide.

(2) Additional considerations. Once petitioner has established a reasonable belief that a respondent presents an imminent threat of harm, a Court may consider any relevant evidence to determine whether a respondent presents an imminent threat of harm to respondent's own self or to others including, but not limited to, any of the following:

(a) A recent act or threat of violence by the respondent against respondent's own self or others, whether or not such violence or threat of violence involves a firearm;

(b) A pattern of acts or threats of violence by the respondent within the past twelve months, or such other time period as the Court determines is appropriate under the circumstances, including, but not limited to, acts or threats of violence by the respondent against respondent's own self or others;

(c) Any dangerous mental health issues of the respondent;

- (d) A previous or existing protective order issued against the respondent under 23 Pa.C.S. § 6101, et seq, 42 Pa.C.S. § 62A01, et seq., or under any other applicable statute;*
- (e) The violation of any previous or existing protective order issued against the respondent under 23 Pa.C.S. § 6101, et seq, 42 Pa.C.S. § 62A01, et seq., or under any other applicable statute;*
- (f) A previous or existing Gun Violence Protection Order, including an emergency order, issued against the respondent;*
- (g) A violation of a previous or existing Gun Violence Protection Order, including an emergency order, issued against the respondent;*
- (h) A conviction of the respondent for a crime that constitutes domestic violence as defined in Pennsylvania Titles 18, 23 or other similar laws from other jurisdictions;*
- (i) The unlawful or reckless use, display, or brandishing of a firearm by the respondent;*
- (j) The history of use, attempted use, or threatened use of physical force or intimidation by the respondent against another person, or the respondent's history of stalking another person;*
- (k) Any prior arrest of the respondent for a felony offense or violent crime;*
- (l) Evidence of the abuse of controlled substances or alcohol by the respondent;*
- (m) Evidence of recent acquisition of firearms by the respondent; and*
- (n) Recent acts of cruelty to animals as provided in 18 Pa.C.S. § 5511 by such person.*

§ 10-2305. *Hearings on Petition and Issuance of a Gun Violence Protection Order.*

(1) General Rule. Within five days of the filing of a petition under this Chapter, or within such other time as the parties may agree or as the Court upon cause shown shall direct, a hearing shall be held before the Court, at which the petitioner must establish one of the circumstances set forth in subsection 10-2304(1) by a preponderance of the evidence. The Court shall direct an appropriate method and time for notice under the circumstances. The notice shall include a statement advising the respondent of the right to be represented by counsel, and the possibility that any firearm, other weapon or ammunition owned may be ordered temporarily relinquished as the result of the hearing, or such other notice as the Court determines is appropriate under the circumstances. This notice shall be printed and delivered in a manner directed by the Court which easily attracts attention to its content.

(2) Emergency Order. If a petitioner requests an emergency Gun Violence Protection Order in a petition filed under this Chapter and alleges a reasonable belief that there is an immediate and present danger that the respondent will abuse another, inflict serious bodily harm to respondent's own self, or commit suicide, the Court shall conduct an ex parte proceeding if it determines such a proceeding is appropriate. Such ex parte proceedings may be conducted by a master appointed consistent with subsection 10-2305(6). The Court may enter such an emergency order as it deems necessary under the circumstances if it finds that there is such an immediate and present danger. Any ex parte order issued under this subsection (2) shall be served concurrently

with the notice of hearing and petition under subsection 10-2305(1). The order shall remain in effect until modified or terminated by the Court after notice and hearing in accordance with subsection 10-2305(1), or as otherwise provided by the Court. The ex parte Gun Violence Protection Order shall direct service of the order and otherwise provide direction to the Police Department to implement the order consistent with Sections 10-2306 and 10-2307 as the Court deems appropriate, and shall include the following, or such other provisions as the Court deems appropriate:

- (a) A statement of the grounds on which the Court's determination is based;*
- (b) The date and time the order was issued;*
- (c) The date and time the order expires;*
- (d) The date, time and location of the scheduled hearing;*
- (e) A notification to the respondent that the respondent is prohibited from possessing or controlling any firearms and is required to relinquish any firearms to a law enforcement officer;*
- (f) The following statement:*

"To the subject of this protection order: This order is valid until the date and time noted above. You are required to immediately relinquish all firearms in your custody, control, or possession. You may not have in your custody or control, purchase, possess, receive, or attempt to purchase or receive, a firearm while this order is in effect. You must relinquish to the Philadelphia Police Department all firearms in your custody, control, or possession. A hearing will be held on the date and at the time noted above to determine if a Gun Violence Protection Order should be issued. Failure to appear at that hearing may result in the Court entering an order against you that is valid for one year. You may seek the advice of an attorney as to any matter connected with this order."

- (g) A verification of service form to be completed by the Philadelphia Police Officer serving the order with instructions to where the verification form must be delivered.*

(3) Gun Violence Protection Order. Upon hearing the matter, if the Court finds by a preponderance of the evidence that a respondent poses an imminent threat of harm to others or to the respondent's own self by having possession, custody or control of any firearm, the Court shall issue a Gun Violence Protection Order for a period not to exceed one year which directs service of the order and otherwise provides direction to the Police Department to implement the order consistent with Sections 10-2306 and 10-2307 as the Court deems appropriate, and includes the following, or such other provisions as the Court deems appropriate:

- (a) A statement of the grounds on which the Court's determination is based;*
- (b) The date and time the order was issued;*
- (c) The date and time the order expires;*
- (d) The date and time for a subsequent hearing for the respondent to appear and confirm that such*

respondent has relinquished any firearms in respondent's possession, custody, or control.

(e) The following statement:

"To the subject of this protection order: This order will last until the date and time noted above. If you have not done so already, you must immediately relinquish to the Philadelphia Police Department all firearms in your custody, control, or possession. You may not purchase, possess, control, receive, or attempt to purchase or receive, a firearm while this order is in effect. You must appear at a hearing scheduled at _____ to demonstrate that you have relinquished any firearms in your possession, custody or control, unless otherwise notified. You may seek the advice of an attorney as to any matter connected with this order."

(f) A verification of service form to be completed by the Police Officer serving the order with instructions as to where the verification form must be delivered.

(4) Renewal of Orders.

(i) A petitioner or a law enforcement officer or law enforcement agency may by motion request a renewal of a Gun Violence Protection Order at any time within one hundred twenty (120) calendar days before the expiration of the order.

(ii) Upon receipt of the motion for renewal, the Court shall schedule a hearing as the Court deems appropriate and notice shall be provided to the respondent.

(ii) The Court may order the renewal of a Gun Violence Protection Order for a period not to exceed one year consistent with the provisions of subsection 10-2303(3). However, if, after notice to the respondent, the motion for renewal is uncontested and the petitioner seeks no modification of the order, the order may be renewed on the basis of the petitioner's motion or affidavit stating that there has been no material change in relevant circumstances since entry of the order and stating the reason for the requested renewal.

(5) Termination of Orders. The respondent may submit a motion to terminate a Gun Violence Protection Order issued under this Chapter by filing a motion averring a changes in circumstances that establish that respondent no longer poses an imminent threat of harm to the respondent's own self or to others. Upon receipt of such a motion, the Court shall review to determine whether respondent's allegations warrant a hearing and, if so, shall schedule a hearing and direct notice to the respondent and petitioner, and any other interested parties, as appropriate. If, after such hearing, the Court determines that the preponderance of the evidence establishes that the respondent no longer poses an imminent threat of harm to the respondent's own self or to others, the Court shall grant the motion and terminate the Gun Violence Protection Order.

(6) The Court may provide for the selection and appointment of a master or masters for emergency relief on a full-time or part-time basis.

§ 10-2306. Relinquishment of Firearms.

(1) Upon receiving notice that any Gun Violence Protection Order has been issued under this Chapter, the Police Department shall:

(a) designate an officer to serve such order.

(b) advise the Pennsylvania State Police and the Federal Bureau of Investigation of such order so that such agencies may provide notice of the order through the Pennsylvania Instant Check System and the National Instant Criminal Background Check System.

(2) The Police Officer serving any Gun Violence Protection Order under this Chapter shall direct that the respondent immediately relinquish all firearms in his or her possession, custody or control.

(3) The Police Officer shall take possession of all firearms in the possession, custody, control of the respondent that are relinquished.

(4) If personal service by a Police Officer is not possible, or not accomplished within twenty-four (24) hours of being issued, the respondent shall relinquish all firearms in a safe manner to the control of the Police Department within twenty-four (24) hours of receiving service or actual notice of such order, or as otherwise directed by the Court.

(5) Police Department Procedures.

(a) The respondent shall be provided by the Police Department a signed and dated written receipt for all firearms received. This receipt shall include, but need not be limited to, a detailed identifying description indicating the serial number and condition of the firearms.

(b) Firearms received by the Police Department shall not be engraved or permanently marked in any manner, including, but not limited to, engraving of evidence or other identification numbers.

(c) Unless reasonable suspicion exists to believe that a particular firearm has been used in the commission of a crime, no firearm shall be test fired.

§ 10-2307. Return or Transfer of Firearms.

(1) If a Gun Violence Protection Order, including an emergency order, is terminated or expires without renewal, the Police Department shall return any relinquished firearm requested by a respondent only after confirming, through a background check, that the respondent is currently eligible to own or possess such firearms under federal and state law.

(2) If a person other than the respondent claims title to any firearm relinquished pursuant to this Section and such person is determined by the Police Department to be the lawful owner, the firearm shall be transferred to him or her, provided that:

(a) The Police Department has confirmed, through a background check, that the individual claiming title to the firearm is currently eligible to own or possess firearms under federal and state law;

(b) The lawful owner agrees to store the firearm in a manner such that the respondent does not have access to or control of the firearm; and

(c) The firearm is not otherwise unlawfully possessed by the owner.

(3) The Police Department shall, if requested, provide prior notice to the family or household members of the respondent, or the petitioner, of the return of a firearm to a respondent.

§ 10-2308. *Refusal to Relinquish Firearms.*

(1) Prohibition. No person shall fail or refuse to relinquish to the Police Department all firearms in such person's custody, control or possession, after being served or having actual notice that such person is the subject of a Gun Violence Protection Order, including an emergency order.

(2) Investigation. If at any time a law enforcement officer becomes aware that a respondent has refused to relinquish all firearms in his or her custody, control or possession required by a Gun Violence Protection Order or has acquired or attempted to acquire possession of any firearm after a Gun Violence Protection Order has been issued, a Police Officer may remove firearms from such respondent, notify the Court, and notify the Police Department Detective Bureau, which may initiate a criminal investigation to determine if probable cause exists to believe that the respondent is involved or about to be involved in any criminal activities.

§ 10-2309. *Authority Retained.*

This Chapter does not limit the ability of a law enforcement officer to conduct an investigation, or to remove a firearm from any person or conduct any search and seizure for firearms pursuant to a Gun Violence Protection Order, including an emergency order, any other applicable court order, or any other lawful authority.

§ 10-2310. *Penalties.*

Penalty. In addition to any sanctions issued by the Court, any person who violates subsection 10-2308(1) shall be subject to a fine of not more than two thousand dollars (\$2,000), or imprisonment for not more than ninety (90) days, or both.

Explanation:

Italics indicate new matter added.